Sectt. II-29—27,004—25-11-25.

Revenue (1926) Department.

Ordinary SERIES.

G.O. No. 351
361

DATED 1-3-1926

[Despatch Abstract.]

Suit - South Kanara - Puttur District Munsif's Court - O.S.683/25-
Ownership of trees - Defence - Sanctioned.

C.F. 31

Law DEPARTMENT.

Rev 262 B
30.1.26

Received ... Registered ... 192

Subject.

Suits (South Kanara) - Puttur District Munsiff's Court O.S.No.683/25 - Ownership of trees - Defence - Recommended.

Reference No. A.604-26-1.

Station Madras Dated the 28th January 1926.

From

W. Scott Brown, Esq., I.C.S.,
Secretary,
The Board of Revenue Land Revenue and Revenue Settlement, etc. Separate Revenue.

M.R.Ry.Diwan Bahadur T.Raghaviah Pantulu Garu, C. S. I.,
Commissioner of Land Revenue.

Resolution-Reference.

*****

Read the following:-

Letter from G.W.Wells, Esq., M.A.,I.C.S., Collector of South Kanara, Ref. on A.3.7945-25, dated 3rd December 1925.

REFERENCE:

Submitted to Government.

2. As the forest offence report in which the plaintiff was charged did not include tree No. 21 the Board considered that the order of the Sub-Magistrate confiscating that tree could not be upheld. The Collector was accordingly requested to arrange for a compromise of the suit, Government agreeing to give up their rights to tree No.21. The Collector reports that the plaintiff does not agree to the compro ise.

considers that the suit may be defended as regards tree No.19 which the plaintiff was charged with cutting and which clearly stood on Government land and requests that the draft written statement submitted by the Collector may be approved subject to suitable modifications. Pages 7-8 missing

3. The Collector will be requested to apply for an adjournment of the case if the orders of Government are not received in time and to intimate the date of posting.

W Wells 29/1
Secretary.

To the Secretary to Government. Law Department.

with enclosures.

Copy to the Collector of South Kanara, with a confidential

Has separate Enclosures 29 1-2-26.

nil 29-1-26
S.S./29-1.

Copy of letter from G.W.Wells, Esq., M.A., I.C.S., Collector of South Kanara, Ref. On A-3-7945-25, dated 3rd December 1925.

I request the Board's sanction to defend the above suit. It has been filed against Government and another by Manjunatha Prabhu for a declaration that two wild jack trees sold by Government to the 2nd Defendant belong to him and for a permanent injunction restraining the Defendants from removing the trees &c.

2. The two trees in question are those marked Nos. 19 and 21 on the Shanbhogue's sketch dated 19th September 1922 (in the Taluk Dis file 353 D/Rev.25. dated 14th September 1925) and standing on Government assessed waste S.No. 130/2, adjoining the Plaintiff's mulgeni land S.No.133/2 of Kutrupadv village. On 19th September 1922 the Revenue Inspector found these and other 21 trees cut by the Plaintiff and seized all

the 23 trees and reported about the offence to the Tahsildar. Sixteen of these trees being jungle wood trees which a karakidar could cut without permit for domestic and agricultural purposes, and there being no evidence to show that they were not cut for these purposes, the Tahsildar held that no offence had been committed in respect of them. Though the remaining 7 trees were reserved trees and their cutting amounted to an offence, the Plaintiff was charged with the cutting of only 6, as the Revenue Inspector reported that the other tree viz. No.21 which has stood very near the boundary line separating the Plaintiff's patta land from the Government land had been shifted towards the patta land owing to the excavation by the Plaintiff of the channel running along the boundary line, and therefore could not be located definitely. The case, however, ended in acquittal, as there was not sufficient evidence to establish the cutting by the Plaintiff but it having transpired in the course of the trial that tree No. 21 had also stood upon Government land viz., 130/2, the Sub Magistrate confiscated to Government all the seven trees under section 517 (1) (b) of the Criminal Procedure Code. In pursuance of this order, the trees were sold by auction by the Revenue Inspector on 1st March 1925 and the two plaint trees fetched an amount of Rs.60-4-0. Thereupon the Plaintiff sent me a suit notice which I recorded, as I thought I could not go behind the Magistrate's order, which, the Plaintiff had not taken any steps to get cancelled.

3. The Government Pleader, Mangalore, states that the case for Government depends upon the evidence that will be adduced on behalf of Government regarding the alleged existence of the trees on Government unreserved land. Though this is doubtless true as regards the question of fact, yet on the question of law, I am of opinion that the Plaintiff is concluded by the Magistrate's order of confiscation.

4. As evidence for Government, I propose to file the Plaintiff's statement dated 14th November 1922 before the Tahsildar of Uppinangadi wherein he has admitted that one of the two wild jack trees at least had stood on [illegible]

regards the other tree,, I shall summon the Shanbhogue who pr. the sketch and the Revenue Inspector who detected the cutting of the trees.

5. I request that the enclosed draft written statement prepared by the Vakil doing Government work at Puttur and declared by the Government Pleader, Mangalore, to be in order, may be approved.

6. The records noted in the margin are enclosed.

(1) Dis file 353 D Rev. of 25, dated 14-9-25 of the Uppinangadi Taluk Office.
(2) This Office Dis file 1970-25 R, dated 17-5-1925.
(3) Copy of judgment in C.C.180/24 on the file of the Sub-Magistrate, Puttur.
(4) Translation of plaint.
(5) Copy of the Mangalore Government Pleader's letter dated 27-11-25 and copy of the Puttur Vakil's letter dated 16-11-25.
6) Copy of draft written statement.

7. The plaint dated 12th September 1925 was served upon me on 19th September 1925. The suit stands posted to 23rd December 1925 for hearing.

****

Not to be Printed

Enclosure.

Letter - from M.R.Ry. B.Achyuta Baliga, B.A.,B.L.,
Pleader, Puttur.
To - the Collector of South Kanara, Mangalore.
Dated - Puttur, 16th November 1925.
No. Letter No. 29.

O.S.683/25 - Puttur Munsiff's Court.

The draft wirtten statement is sent herewith for approval. The records noted below are also returned.

2. I find from the records that the offence report was laid and Plaintiff was prosecuted in respect of, among others,

one wild jack tree out of the 2 plaint trees viz., tree No.19 on the sketch Ex. A. in C.C. 130/24. There was no offence report and no charge against Plaintiff for the other tree - No.21 on the above sketch. The Revenue Inspector's report date 29th June 1923 shows that tree No.21 existed near the boundary line between Plaintiff's patta land and Government land S.No. 130/2 and the exact position of the tree could not be made out It was doubtful whether the case would stand in respect of this tree. Apparently this was the reason why this tree was not included in the offence report. The Revenue Inspector, however, observes that owing to the collapse of a big mass of mud consequent on excavation by Plaintiff, the position of the tree must have shifted towards patta land. As regards the other tree it is clear from Revenue Inspector's report that it existed on Government land at some distance from the boundary line and this fact was admitted by Plaintiff. I have therefore claimed both the trees as belonging to Government.

3. When there was no charge and no prosecution in respect of tree No.21, it follows that the Magistrate's order confiscating the trees cannot apply to it. Yet on reading the Magistrate's judgment I find this tree also included in the Magistrate's order. But if the tree stood on Government land, the Government has every right to sell it by auction. I do not know if the doubt as to the exact position of three was removed before the sale was ordered. I feel some doubt as to the ownership of this tree on account of its position on the boundary line and its non-inclusion in the offence report. The burden of proof, however, lies on Plaintiff that the tree stood on his patta land.

***

List of documents.

1. Copy of plaint.
2. Office Dis file 1970-25 R. dated17th May 1925.
3. Records of D.R.89/22.23 of the Uppinangadi Taluk Office.
4. Papers connected with Ref. C.3024 Sub 25 of [illegible] Taluk Office.

IN THE COURT OF THE DISTRICT MUNSIF OF PUTTUR.

O.S.No. 683 of 25.

Manjunatha Prabhu, son of Rangaya Prabhu of Kutrupady village, Uppinangadi Taluk — Plaintiff.

1. The Secretary of State for India in Council
2. Narayana Poi, son of Rama Poi residing in Kadaba village. — Defendants.

Under column 26 of Code.

The plaint filed by the Plaintiff:-

1. S.No.155/2 of Kutrupady village is of Plaintiff's mulgeni right. The defendants have no right whatever to it The plot is also in the possession of Plaintiff himself.

2. Two wild jack trees standing on the said plot had some years back, fallen of themselves. These trees belong to the plaintiff. They are even now lying on the plaintiff's land. The measurements of these trees are 7.6' x 40' & 7' x 43'

3. They were auctioned by the 1st Defendant without any right and were purchased by the second defendant.

4. Though a notice was sent to the Collector of South Kanara on 3rd March 1925 to cancel the sale as it was illegal. the Collector has not complied with the request and the 2nd defendant is now attempting to remove the trees. The plaintiff has, therefore, been constrained to file this suit for a declaration of his right and also for an injunction restraining the defendants from removing the trees.

5. The cause of action has arisen in Kutrupadi village since 1st March 1925 the date of sale.

6. The value of reliefs has been estimated at Rs.10.

7. The plaintiff prays that the defendants may be summoned and examined and judgment and decree passed in his

favour

favour (a) granting a permanent injunction against the defendants restraining them from taking away the trees, after declaring that the two wild jack trees of the measurements specified above and standing on S.No. 133/2 of Kutrupady village of Uppinangadi Taluk belong to the plaintiff. The value of this relief Rs. 10--0--0

(b) ordering the defendants to pay plaintiff the costs of this suit,

(c) granting other consequential reliefs not prejudicial to him.

Dated 12th September 1925.

(True copy of the plaint).

(Sd.) K.Krishnaraya Shenoi,
Vakil for Plaintiff.

(True Translation.)

IN THE COURT OF THE DISTRICT MUNSIF OF PUTTUR.

O.S. No. 683/25.

--

Manjunatha Prabhu ... Plaintiff.

The Secretary of State for India and another. Defendants.

Written statement of 1st Defendant under Order II Rule I Act 5 of 1908.

The 1st defendant states as follows:-

1. The Plaintiff's suit is unjust, speculative and unsustainable at law.

2. This Defendant denies that the 2 wild jack trees mentioned in the plaint existed in S.No. 133/2 belonging to Plaintiff on mulgeni right or that the trees in question belong to Plaintiff. On the other hand this Defendant stat

that the said trees stood on Government unreserved land. S.No. 130/2 of Kutrupadi village and that the Plaintiff has no manner of right to them.

3. The Plaintiff having committed an offence among other things. by causing the said trees to fall and causing damage to them, he was prosecuted for offences under the Forest Act in C.C 180/24 on the file of the Sub Magistrate of Puttur. The Sub-Magistrate held that the plaint trees stood on Government land and ordered them to be confiscated. Accordingly those trees wer sold in auction by the Revenue authorities through the Revenue Inspector of Uppinangadi and were purchased by 2nd Defendant who was the highest bidder. The plaintiff has no right to the trees or to question such sale.

4. The plaintiff having failed to appeal against the order of the Sub-Magistrate in C. C. No. 180/24 regarding the disposal of the property, he is now debarred from claiming the trees. The plaintiff's suit claiming the trees is unsustaina at law.

5. The plaint trees having been delivered to 2nd defendant, the plaintiff's suit for declaration and injunction, without asking for possession is opposed to Section 42 of the Specific Relief Act.

6. The plaintiff is not entitled to the declaration or injunction as against this Defendant.

7. All other allegations of the plaint, which are not expressly admitted herein are denied

8. The plaintiff's suit may therefore be dismissed with costs.

Letter - From Rao Saheb B.Mahabala Hegde, B.A..B.L
Government Pleader and Public Prosecutor.
Mangalore.

To - the Collector of South Kanara, Mangalore.

Dated - Mangalore, 27th November 1925.

No. Dis. No.219/25.

Ref.-on A-3-7945-25, dated 20th November 1925. The statement is in order. The case for Government depends upon the evidence that will be adduced on behalf of Government regarding the alleged existence of the trees on Government unreserved land. Records sent to me are herewith returned.

S.S./ 29-1.

CURRENT NO. 0769 PUBLIC

LAW DEPARTMENT. C.F. 31

CURRENT No.

Received ..... 192 Registered 192

Subject.

SUITS - (South Kanara) - Puttur District Munsif's Court - O.S. 683/25 - Trees - Ownership - Defence.

Law(Genl) Public (Mag.) No. in continuation of no. R. 696-B-1 Law(Genl), dated 5th Feb. 1926.

Law(Genl) No 769 B-1 9.2.26

9.2.26.

ENCLOSURES.
No.
Spare copies

REFERENCE No. A.604/26-2.

Station Madras. *Dated the* 5th February 1926

From
W. Scott Brown Esq., I.C.S.,
Secretary.

Land Revenue and
The Board of Revenue ~~Revenue~~ Settlement, ~~etc.~~
~~Separate Revenue.~~

M.R.Ry. Dewan Bahadur T. Raghaviah Pantulu Garu C.S.I.,
Commissioner of Land Revenue.

~~Reference~~
Reference.

Read the following:-

Letter from G.W. Wells Esq., M.A., I.C.S., Collector of South Kanara; No. Ref. on A3-7945-25, dated 2-2-1926:-

Reference:- Board's Reference No.A.604/26-1, dated 28th January 1926.

The suit stands posted to 8th February 1926. I am now instructing the Vakil to apply for another adjournment, if the orders of Government are not received before then.

REFERENCE.

Submitted to Government in continuation of Board's Reference A.604-26-1, dated 28th January 1926.

for Secretary.

To the Secretary to Government, Law Department.

V.C/5.2.26.

very urgent

13

Law (General) DEPARTMENT. C.F. 81 10308 B

CURRENT No.

Received ... 192 Registered ... 192

SECRETARY TO GOVT. MADRAS LAW DEPARTMENT 19 FEB 1926

CURRENT NO. 1001 20.2.'26 PUBLIC

Subject. Ra. 462-0c.

Pub. no. 1001-1 20.2.26 Suits - (South Kanara) - Puttur District Munsif's Court -

O.S.No.683/25 - Trees - ownership - Defence.

Revenue. -- Pub. Dept.

SECY. TO GOVT. 20 FEB 1926 LAW DEPARTMENT

20.2.26. 20/2/26. 20/2/26.

ENCLOSURES.
No.
Spare copies.

Reference -NoA-604-26.3,

Station Madras Dated the 18th February 1926.

Law (General) Dept.

From W. SCOTT BROWN, Esquire, I.C.S.,

Secretary - Land Revenue. and

To ~~The~~ Board of Revenue ~~Revenue Settlement, etc.~~ Separate Revenue.

M.R.Ry., Diwan Bahadur T.Raghaviah Pantulu Garu, C.S.I.,
Commissioner of Land Revenue.

re continuation of cc. 7693-1 Law (Genl.) dt. 8-2-26

19-2-26 20/2

Law (Genl.) dept. 10308-1 20.2.26.

~~Resolution~~ Reference. Read the following paper:--

Letter from G.W.Wells, Esquire, M.A., I.C.S., Collector of South Kanara, Ref.on.No.A-3-7945-25, dated the 14th February 1926.

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REFERENCE.

Submitted to Government in continuation of Board's Reference No.A-604-26-3, dated the 5th February 1926.

2. The Board requests that the orders of Government may be communicated to the Collector by wire to save delay.

18/2/26

for Secretary.

To the Secretary to Government, Law (General) Department.
Copy to the Collector of South Kanara.

C.N.N./18-2-1926.

18-2

94

Copy of letter from G.W.Wells, Esquire, M.A., I.C.S., Collector of South Kanara, Ref.on.A.3-7945-25, dated the 14th February 1926.

Suits - Puttur - District Munsif's Court - O.S. 1925-683.

Board's Reference No.A-604-26.1, dated 28-1-1926.

In continuation of my letter dated 2nd February 1926, I have to inform the Board that the Vakil doing Government work at Puttur reports that the suit stands adjourned to 22nd February 1926 and that the written statement on behalf of Government will have to be filed on that date, as the suit had several adjournments.

C.N.N./18-2-1926.

nks

Recd 20/2 5.10 P.M.

Rev Dept.

Lo 4/8

The main file was sent to the Govt Pleader u.s. on 18-2-26 for perusing the draft written statement. The Collector may be asked to apply for a short adjournment. The following telegram is submitted for approval.

Telegram No 4025. xpress.

To (The) Collector [of South Kanara] Mangalore.

Suit. Puttur [District] Munsif's Court O.S. [No] 683 of 25. Ownership [of] trees. [Please] apply [for] fortnight's adjournment.

Telgm + P.C.

Issue telegram & post copy at one o'clock 5.40 P.M. P.C. should go by Tuesday's mail.

20/2

20-2-26

DESPATCHED

20 FEB 1926

C F. 30—41,000—8-9-24.

V.U 15

REVENUE DEPARTMENT. Rev. 532 B

27-2-26.

Received ..... 192 . *Registered* ..... 192 .

Subject.

Suit - Puttur - District Munsif's court - O.S. 1925-6

Government wire dated 20-2-26.

TOUS.

Submitted for perusal. The file was submitted with draft order and telegram yesterday.

ENCLOSURES.
No. .....
.....
Spare copies .....

Register No. A 3 - 7945-25.

Station Mangalore. , *Dated the* 25th February. 1926 .

From (Name) G. W. Wells, Esquire, M.A., I.C.S.,

(Designation) Collector of South Kanara.

To The Secretary to the Government of Madras,

REVENUE Department.

MADRAS.

Sir,

As ordered by Government an adjournment has been obtained and the suit now stands posted to 8-3-26. The vakil doing Government work at Puttur informs me that the court has granted this adjournment as a last chance and that it will be possible to get a further adjournment.

Your obedient servant,

For Collector.

25/2/26

Copy to the Board, Land Revenue & Settlement with reference its Ref.No.A 604-26-1 dated 28-1-1926.

U.S. 25-2-26.

Law (General) Department.

(C.No.696 B). From the Board of Revenue, L.R.& Sett., Ref.No. A.604-26-1, dated the 28th January 1926.

Suits - South Kanara - Puttur District Munsif's Court - O.S.No.683/25 - Ownership of trees - Defence.

Vide abstracts of (1)
G.O.1783 Rev./17-11-25
G.O. 59 Pub./ 2--2-26 (V)

Defence of suits against Government is sanctioned by the administrative department to which the subject matter relates. In the present case the conduct of a Sub-Magistrate in making a wrong order is in question. The file therefore concerns Public (Magisterial). to which it may be transferred

5-2-26.

Pub (magl) sc

CURRENT NO.
0708
PUBLIC

Law (Gen) sc 696B-1
5.2.26

Pub: Dept

ASSISTANT SECRETARY
5 FEB 1926

Now 2 copies
7-8 cp

The Suit relates to the Question as to the ownership of two wild jack trees and the main argument for the Defence is that the trees in Question stood on Govt unreserved land.

Even if the sub-magistrate's order were wrong it relates only to one tree (viz tree No 21).

In these circumstances it is for the Rev: Dept to deal with this Case.

I do not know whether the Case may be transferred to them.

10/2/26.

Pub sc 708 1
10.2.26

Revenue.

18 2

Rev Dept

Rev 365. B
10 - 2 '26

ASST. SECRETARY TO GOVT. 10 FEB 1926 REVENUE DEPARTMENT

Sirs: Please see the copy of the plaint at pp6-7CF. The facts connected with the suit are stated in para. 2 of the Collector's letter at pp 2-3 CF. The suit is for a declaration that two jack trees which were confiscated by the Submagistrate and sold by the Rev Dept in auction, belongs to the plaintiff. It will be observed that the Rev Inspector charged the plaintiff with having cut a jack tree (No 19) standing on Govt waste. But the Submagte confiscated not only that tree (No 19) but also another (No 21) about which no complaint was made. The Board has already pointed out that the order of the Submagistrate confiscating tree No 21 could not be upheld. It now recommends that the suit may be defended in regard to tree No 19. In this aspect, the Submagte's order of confiscation and the subsequent sale of tree No 21 will have to be cancelled and set aside, ~~but~~ though the suit in regard to tree No 19 will be defended. It would appear that as the case primarily arises out of the action of the Submagte which is now reported to be indefensible on part, the ~~case~~ file is one for disposal in Public. But as that dept have sent the file to Rev on the grounds that the subject matter of the suit relates to trees the file may now be sent to the Govt Pleader for scrutinising and perusing the ~~plaint~~ draft written statement with reference to para. 2 of Board's Reference.

para 2 of Collr's letter pp 2-3 CF

para 2 of 1 CF

GOVT. PLEADER'S OFFICE 19 FEB 1926 196 MADRAS

Revenue 365 B/26-1 18-2-26

pp 7-8 CF

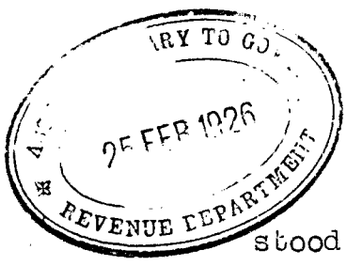
16/2/26

Govt Pleader V.O Hon'ble

3 19

Rev 505-B.
25.2.26

Opinion No. 8.



In re. U.O. No. 365 B/26-1, Revenue, dated 18-2-26 from the Government, Revenue Department to the Government Pleader, Madras.

The plaintiff's case is that the two trees in question stood on Survey No. 133/2 of Kutrupady village and that the said Survey number belongs to him on mulgeni rights. The ~~plaintiff~~ defendant's case seems to be that the two trees stood in Survey No. 130/2 which is Government unreserved land. The Magistrate acquitted the plaintiff and directed confiscation of these trees also, which were subsequently sold by the Revenue Inspector and the two trees in question fetched an amount of Rs. 60-4-0. The Collector in para 3 of his letter seems to be of opinion that since the plaintiff did not prefer any appeal from the order passed by the Magistrate ~~the~~ the plaintiff is concluded by the Magistrate's order of confiscation. It seems to me that this portion is not tenable. An order passed under Section 517 of Criminal Procedure Code does not decide the question of ownership of the property. It merely decides the question of the right to possession till the Civil Court has decided the question of ownership. That being so, the plaintiff is not concluded by the Magistrate's order and his suit in the Civil Court to establish his ownership of the trees would seem to be maintainable. The real question in the case is one that ~~upon~~ depends upon the evidence that might be adduced in the suit. The plaintiff will have to establish that the trees in question stood on land belonging to him or in his possession. If he fails to do that, his suit will fail on the merits. As I said already, it is a question depending on evidence whether either or both the trees in question stood on the plaintiff mulgeni land or the defendants unreserved land. The draft written statement is in order.

Madras, 23-2-26.

Ag. Government Pl a

Jou 8

Please see the Govt Pleader's opinion at p 3 ante. He considers that the question whether one or both the trees stood on the plaintiff's melvaram or Govt unreserved land, will depend upon the evidence in the case. He states that the defence statement is in order and does not seem to show the Board's view that the suit should be defended in regard to one tree only.

A draft order sanctioning the defence of the suit is submitted

26.2.26
26226

V/3

Sectt. II-5 (a)—28,703—6-12-24. (6)

Rev. DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied ..	27/2/26	
When examined ..	1/3/26	
When signed ..		
When despatched ..		

READ AGAIN G.O. No....., dated.....192 .

" " " " ..... " .....192 .

READ ALSO:—

C. No. 262B 365B From the Bd of Rev LR 43 Ref A No. 602/26-1, dated 28-1-1926

" " 462B " " " " 602/26-3 " 18-2-1926

" " Telegram to the Coll of S. Kanara. 462B " 20-2-1926

Govt Telegram 1/3

ORDER. Mis. No. 351, dated 1-3-1926

The Govt sanction the defence of Suit O.S. No 683/1925 on the file of the District Munsif, Puttur and approve the draft written statement submitted by the Collector.

2/. The following telegram will be sent to the Coll of S. Kanara:—
Your [letter] 7945 [dated] 3rd December [1925] Suits - O.S. [No.] 683/25 - Puttur Dt. Munsif's Court - Ownership [of] trees - Defence sanctioned (your) written statement approved.

DESPATCHED 2MAR1926

To

The Board of Rev. with Copy of Govt Pleader's opinion

*P/4 NE Copy to the Coll of S. Kanara - with a copy of G.P.'s opinion.

Tel Sent 1/3

Govt Telegram sent 1/3